

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE ENROLLED ACT No. 1892

---

AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 12-23-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A drug abuser or an alcoholic charged with or convicted of a felony may request treatment under the supervision of the division and upon the consent of the authorities concerned as set forth in this chapter instead of prosecution or imprisonment, unless any of the following conditions exist:

(1) The offense is a forcible felony or burglary classified as a Class A or Class B felony.

~~(2) The offense is that of delivering a controlled substance.~~

~~(3)~~ (2) The defendant has a record that includes at least two (2) prior convictions for forcible felonies or a burglary classified as a Class A or Class B felony.

~~(4)~~ (3) Other criminal proceedings, not arising out of the same incident, alleging commission of a felony are pending against the defendant.

~~(5)~~ (4) The defendant is on probation or parole and the appropriate parole or probation authority does not consent to the request.

~~(6)~~ (5) The defendant was admitted to a treatment program under IC 12-23-7 or IC 12-23-8 on two (2) prior occasions within the preceding two (2) years.

SECTION 2. IC 16-31-3-14.5 IS AMENDED TO READ AS

HEA 1892 — Concur+



C  
o  
p  
y

FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.5. The commission may permanently revoke a license or certificate under procedures provided by section 14 of this chapter if the individual who holds the license or certificate issued under this title is convicted of any of the following:

- (1) Dealing ~~in~~ **or manufacturing** cocaine, ~~or~~ a narcotic drug, **or methamphetamine** under IC 35-48-4-1.
- (2) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.
- (3) Dealing in a schedule IV controlled substance under IC 35-48-4-3.
- (4) Dealing in a schedule V controlled substance under IC 35-48-4-4.
- (5) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.
- (6) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.
- (7) Dealing in a counterfeit substance under IC 35-48-4-5.
- (8) Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).
- (9) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (8).
- (10) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (8).
- (11) A crime of violence (as defined in IC 35-50-1-2(a)).
- (12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11).

SECTION 3. IC 16-42-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. A drug or device is considered to be misbranded under any of the following conditions:

- (1) If the labeling of the drug or device is false or misleading in any way.
- (2) If the drug or device is in package form unless the drug or device bears a label containing:
  - (A) the name and place of business of the manufacturer, packer, or distributor; and
  - (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.



C  
o  
p  
y

However, under clause (B) reasonable variations shall be permitted and exemptions as to small packages shall be established by rules adopted by the state department.

(3) If any word, statement, or other information required to appear on the label or labeling, under this chapter or a rule adopted under IC 16-42-1-2 is not prominently placed on the drug or device with conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms that make the label likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If the drug or device:

(A) is for use by humans; and

(B) contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, **methamphetamine**, or sulphonmethane, or any chemical derivative of such substance, which derivative after investigation has been found to be and is designated as habit forming, by rules adopted by the state department under IC 16-42-1 through IC 16-42-4 or by regulations issued under 21 U.S.C. 352(d);

unless the label on the drug or device bears the name and quantity or proportion of that substance or derivative and the statement "Warning † May Be Habit Forming".

(5) If a drug, unless the following conditions are met:

(A) The label on the drug bears, to the exclusion of any other nonproprietary name except the applicable systematic chemical name or the chemical formula, the following:

(i) The established name of the drug, if any.

(ii) If the drug is fabricated from at least two (2) ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of those substances contained in the drug. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, applies only to prescription drugs.

C  
o  
p  
y



(B) If a prescription drug, the established name of the drug or ingredient on the label (and on any labeling on which a name for the drug or ingredient is used) is printed prominently and in type at least half as large as that used for any proprietary name or designation for the drug or ingredient.

However, to the extent that compliance with the requirements of clause (A)(ii) or clause (B) is impracticable, exemptions shall be allowed under rules adopted by the state department or by regulations promulgated under the Federal Act.

(6) Unless the drug's or device's labeling bears:

(A) adequate directions for use; and

(B) adequate warnings against use in those pathological conditions or by children where the drug's or device's use may be dangerous to health or against unsafe dosage or methods or duration of administration or application in the manner and form that is necessary for the protection of users.

However, if any requirement of clause (A) as applied to any drug or device is not necessary for the protection of the public health, the state department shall adopt rules exempting the drug or device from that requirement.

(7) If a drug purports to be a drug the name of which is recognized in an official compendium, unless the drug is packaged and labeled as prescribed in the compendium. However, the method of packing may be modified with the consent of the state department in accordance with regulations promulgated by the federal security administrator under the Federal Act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, the drug is subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless the drug is labeled and offered for sale as a homeopathic drug. In that case the drug is subject to the Homeopathic Pharmacopoeia of the United States and not to the United States Pharmacopoeia.

(8) If a drug or device has been found by the federal security administrator or the state department to be a drug liable to deterioration, unless the drug or device is packaged in a form and manner and the drug's or device's label bears a statement of such precautions as the federal security administrator or the state department requires by rule or regulation as necessary for the protection of the public health. A rule or regulation may not be established for any drug recognized in an official compendium

C  
o  
p  
y



until the federal security administrator or the state department informs the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and that body fails within a reasonable time to prescribe requirements.

(9) If a drug's container is made, formed, or filled as to be misleading.

(10) If a drug is an imitation of another drug.

(11) If a drug is offered for sale under the name of another drug.

(12) If a drug is or purports to be or is represented to be a drug composed wholly or partly of insulin, unless:

(A) the drug is from a batch with respect to which a certificate or release has been issued under Section 506 of the Federal Act; and

(B) the certificate or release is in effect with respect to the drug.

(13) If a drug is or purports to be or is represented to be a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative of those drugs, unless:

(A) the drug is from a batch with respect to which a certificate or release has been issued under Section 507 of the Federal Act; and

(B) the certificate or release is in effect with respect to that drug.

However, this subdivision does not apply to any drug or class of drugs exempted by regulations promulgated under Section 507(c) or 507(d) of the Federal Act.

(14) If a drug or device is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling of the drug or device.

(15) Under the conditions described in section 6 of this chapter.

SECTION 4. IC 22-11-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

**Chapter 20. Anhydrous Ammonia and Ammonia Solutions**

**Sec. 1. As used in this chapter, "ammonia solution" means any ammonia solution that contains at least ten percent (10%) by weight of free ammonia or having a vapor pressure of one (1) PSIG or above at one hundred four (104) degrees Fahrenheit.**

**Sec. 2. As used in this chapter, "appurtenances" includes pumps, compressors, safety relief devices, liquid level gauging**



C  
O  
P  
Y

devices, valves, and pressure gauges.

**Sec. 3.** As used in this chapter, "container" includes vessels, tanks, cylinders, or spheres.

**Sec. 4.** As used in this chapter, "equipment law" has the meaning set forth in IC 22-12-1-11.

**Sec. 5.** As used in this chapter, "law" includes the following:

- (1) IC 13 or a rule adopted under IC 13.
- (2) IC 15-3-2 or a rule adopted under IC 15-3-2.
- (3) IC 22-8-1.1 or a rule adopted under IC 22-8-1.1.
- (4) An equipment law.

**Sec. 6. (a)** This section does not apply to a person that stores or transports anhydrous ammonia ( $\text{NH}_3$ ) or an ammonia solution for a lawful agricultural or commercial purpose.

**(b)** A person who knowingly or intentionally stores or transports anhydrous ammonia ( $\text{NH}_3$ ) or an ammonia solution:

- (1) in a container that does not; or
- (2) with appurtenances that do not;

conform to the requirements of a law governing the design, construction, location, installation, or operation of equipment for storage, handling, use, or transportation of anhydrous ammonia ( $\text{NH}_3$ ) or an ammonia solution commits a Class A misdemeanor.

**SECTION 5.** IC 25-1-1.1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2.** A board, a commission, or a committee may suspend or revoke a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

- (1) Possession of cocaine, ~~or~~ a narcotic drug, ~~or~~ **methamphetamine** under IC 35-48-4-6.
- (2) Possession of a controlled substance under IC 35-48-4-7(a).
- (3) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).
- (4) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).
- (5) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).
- (6) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).
- (7) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.
- (8) Maintaining a common nuisance under IC 35-48-4-13.
- (9) An offense relating to registration, labeling, and prescription



forms under IC 35-48-4-14.

(10) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (9).

(11) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (9).

(12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11).

SECTION 6. IC 25-1-1.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. A board, a commission, or a committee shall revoke or suspend a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

(1) Dealing in ~~or~~ **manufacturing** cocaine, ~~or~~ a narcotic drug, **or methamphetamine** under IC 35-48-4-1.

(2) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.

(3) Dealing in a schedule IV controlled substance under IC 35-48-4-3.

(4) Dealing in a schedule V controlled substance under IC 35-48-4-4.

(5) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.

(6) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.

(7) Dealing in a counterfeit substance under IC 35-48-4-5.

(8) Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).

(9) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (8).

(10) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (8).

(11) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (10).

(12) A violation of any federal or state drug law or rule related to wholesale legend drug distributors licensed under IC 25-26-14.

C  
o  
p  
y



SECTION 7. IC 31-30-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The juvenile court does not have jurisdiction over an individual for an alleged violation of:

- (1) IC 35-42-1-1 (murder);
- (2) IC 35-42-3-2 (kidnapping);
- (3) IC 35-42-4-1 (rape);
- (4) IC 35-42-4-2 (criminal deviate conduct);
- (5) IC 35-42-5-1 (robbery) if:
  - (A) the robbery was committed while armed with a deadly weapon; or
  - (B) the robbery results in bodily injury or serious bodily injury;
- (6) IC 35-42-5-2 (carjacking);
- (7) IC 35-45-9-3 (criminal gang activity);
- (8) IC 35-45-9-4 (criminal gang intimidation);
- (9) IC 35-47-2-1 (carrying a handgun without a license);
- (10) IC 35-47-10 (children and firearms);
- (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); **or**
- ~~(12) IC 35-48-4-1 (dealing in cocaine, or a narcotic drug);~~
- ~~(13) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance);~~
- ~~(14) IC 35-48-4-3 (dealing in a schedule IV controlled substance);~~
- or**
- ~~(15)~~ **(12)** any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in subdivisions (1) through ~~(14)~~; **(11)**;

if the individual was at least sixteen (16) years of age at the time of the alleged violation.

**(b) The juvenile court does not have jurisdiction for an alleged violation of manufacturing or dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1), dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2), or dealing in a schedule IV controlled substance (IC 35-48-4-3), if:**

- (1) the individual has a prior unrelated conviction under IC 35-48-4-1, IC 35-48-4-2, or IC 35-48-4-3; or**
- (2) the individual has a prior unrelated juvenile adjudication that, if committed by an adult, would be a crime under IC 35-48-4-1, IC 35-48-4-2, or IC 35-48-4-3;**

**and the individual was at least sixteen (16) years of age at the time of the alleged violation.**

~~(b)~~ **(c)** Once an individual described in subsection (a) has been charged with any crime listed in subsection (a)(1) through (a)(15), the

C  
o  
p  
y





court having adult criminal jurisdiction shall retain jurisdiction over the case even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to or a conviction of a lesser included offense does not vest jurisdiction in the juvenile court.

SECTION 8. IC 31-34-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. **(a)** A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and
- (2) the child needs care, treatment, or rehabilitation that the child:
  - (A) is not receiving; and
  - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

**(b) Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.**

SECTION 9. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) The following may be seized:

- (1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:
  - (A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:
    - (i) Dealing in **or manufacturing** cocaine, ~~or a~~ narcotic drug, **or methamphetamine** (IC 35-48-4-1).
    - (ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
    - (iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
    - (iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).
    - (v) Dealing in a counterfeit substance (IC 35-48-4-5).
    - (vi) Possession of cocaine, ~~or a~~ narcotic drug, **or methamphetamine** (IC 35-48-4-6).
    - (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
    - (viii) Dealing in marijuana, hash oil, or hashish



(IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in **or manufacturing** cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in

C  
o  
p  
y



IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in **or manufacturing** cocaine, **or a** narcotic drug, **or methamphetamine**).
- (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (5) IC 35-48-4-6 (possession of cocaine, **or a** narcotic drug, **or methamphetamine**) as a Class A felony, Class B felony, or Class C felony.
- (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 10. IC 34-30-3-2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2. (a) The definitions set forth in IC 22-11-20 apply to this section.**

**(b) Except as provided in subsection (c), the victim or an agent of the victim of a theft (IC 35-43-4-2(a)) or criminal conversion (IC 35-43-4-3) of:**

- (1) anhydrous ammonia (NH<sub>3</sub>);**
- (2) an ammonia solution; or**
- (3) a container used to store or transport anhydrous ammonia or an ammonia solution;**

**is immune from civil liability for injury or damage resulting from the possession or use of the anhydrous ammonia, ammonia**



C  
o  
p  
y

solution, or container by another person to commit a violation of IC 35-48-4.

(c) A victim or an agent described in subsection (b) is not immune from civil liability under subsection (b) if:

(1) the victim or agent committed a crime involving the anhydrous ammonia, ammonia solution, or container that is the subject of the theft or criminal conversion; or

(2) the victim's or agent's willful or intentional commission of a violation of an applicable law, rule, or regulation governing the:

- (A) design;
- (B) construction;
- (C) location;
- (D) installation; or
- (E) operation;

of equipment for storage, handling, use, or transportation of anhydrous ammonia or ammonia solution proximately caused the theft or criminal conversion.

SECTION 11. IC 35-33-5-5, AS AMENDED BY P.L.174-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

- (A) the rightful owner has been notified to take possession of the property; or
- (B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the

C  
o  
p  
y



county general fund.

(2) **Except as provided in subsection (e)**, property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) **A law enforcement agency may destroy or cause to be destroyed chemicals or controlled substances associated with the illegal manufacture of drugs or controlled substances without a court order if all the following conditions are met:**

(1) **The law enforcement agency collects and preserves a sufficient quantity of the chemicals or controlled substances to demonstrate that the chemicals or controlled substances were associated with the illegal manufacture of drugs or controlled substances.**

(2) **The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals and controlled substances.**

(3) **The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals and controlled substances present at the illegal manufacturing site.**

**The photographs and description of the property shall be admissible into evidence in place of the actual physical evidence.**

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of it. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

~~(f)~~ (g) The law enforcement agency disposing of property in any manner provided in ~~subsections~~ **subsection (b), and (c), of this section or (e)** shall maintain certified records of any such disposition. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

~~(g)~~ (h) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

~~(h)~~ (i) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise

C  
o  
p  
y



permanently identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

SECTION 12. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

- (1) the risk that the person will commit another crime;
- (2) the nature and circumstances of the crime committed;
- (3) the person's:
  - (A) prior criminal record;
  - (B) character; and
  - (C) condition;
- (4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
- (5) whether the person violated a protective order issued against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and
- (6) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
- (2) The person has a history of criminal or delinquent activity.
- (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.
- (4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.
- (5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
- (6) The victim of the crime was mentally or physically infirm.
- (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
- (8) The person committed a sex crime listed in subsection (e) and:



- (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
  - (B) the person had knowledge that the person was a carrier of HIV; and
  - (C) the person had received risk counseling as described in subsection (g).
- (9) The person committed an offense related to controlled substances listed in subsection (f) if:
- (A) the offense involved:
    - (i) the delivery by any person to another person; or
    - (ii) the use by any person on another person;
 of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;
  - (B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and
  - (C) the person had received risk counseling as described in subsection (g).
- (10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.
- (11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).
- (12) Before the commission of the crime, the person administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.
- (13) The person:
- (A) committed trafficking with an inmate under IC 35-44-3-9; and
  - (B) is an employee of the penal facility.
- (c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:
- (1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
  - (2) The crime was the result of circumstances unlikely to recur.

C  
o  
p  
y



- (3) The victim of the crime induced or facilitated the offense.
- (4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.
- (5) The person acted under strong provocation.
- (6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.
- (7) The person is likely to respond affirmatively to probation or short term imprisonment.
- (8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.
- (9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.
- (10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.
- (11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.
- (d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.
- (e) For the purposes of this article, the following crimes are considered sex crimes:
  - (1) Rape (IC 35-42-4-1).
  - (2) Criminal deviate conduct (IC 35-42-4-2).
  - (3) Child molesting (IC 35-42-4-3).
  - (4) Child seduction (IC 35-42-4-7).
  - (5) Prostitution (IC 35-45-4-2).
  - (6) Patronizing a prostitute (IC 35-45-4-3).
  - (7) Incest (IC 35-46-1-3).
  - (8) Sexual misconduct with a minor under IC 35-42-4-9(a).
- (f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:
  - (1) Dealing in **or manufacturing** cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1).
  - (2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
  - (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
  - (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
  - (5) Possession of cocaine, ~~or~~ a narcotic drug, **or**



C  
o  
p  
y



**methamphetamine** (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

(2) warned of the behavior that can transmit HIV.

SECTION 13. IC 35-38-2.6-1, AS AMENDED BY P.L.242-1999, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the sentencing of a person convicted of:

(1) a felony whenever any part of the sentence may not be suspended under IC 35-50-2-2 or IC 35-50-2-2.1; or

(2) a misdemeanor whenever any part of the sentence may not be suspended.

(b) This chapter does not apply to persons convicted of any of the following:

(1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.

~~(2) Offenses related to controlled substances listed in IC 35-38-1-7.1 for which a Class A or Class B felony is imposed.~~

~~(3) (2) Any of the felonies listed in IC 35-50-2-2(b)(4).~~

SECTION 14. IC 35-41-1-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 29. (a) "Youth program center" means the following:

(1) A building or structure that on a regular basis provides recreational, vocational, academic, social, or other programs or services for persons less than eighteen (18) years of age.

(2) The real property on which a building or structure described in subdivision (1) is located.

(b) The term does not include school property (as defined in section 24.7 of this chapter).

SECTION 15. IC 35-42-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A person who:

(1) knowingly or intentionally kills another human being;

(2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery,

C  
o  
p  
y



or carjacking;

(3) kills another human being while committing or attempting to commit:

(A) dealing in **or manufacturing** cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1);

(B) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(C) dealing in a schedule IV controlled substance (IC 35-48-4-3); or

(D) dealing in a schedule V controlled substance; or

(4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

SECTION 16. IC 35-45-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. As used in this chapter:

"Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

"Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or merely associated in fact.

"Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

"Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

(1) A provision of IC 23-2-1, or of a rule or order issued under IC 23-2-1.

(2) A violation of IC 35-45-9.

(3) A violation of IC 35-47.

(4) A violation of IC 35-49-3.

(5) Murder (IC 35-42-1-1).

(6) Battery as a Class C felony (IC 35-42-2-1).



- (7) Kidnapping (IC 35-42-3-2).
- (8) Child exploitation (IC 35-42-4-4).
- (9) Robbery (IC 35-42-5-1).
- (10) Carjacking (IC 35-42-5-2).
- (11) Arson (IC 35-43-1-1).
- (12) Burglary (IC 35-43-2-1).
- (13) Theft (IC 35-43-4-2).
- (14) Receiving stolen property (IC 35-43-4-2).
- (15) Forgery (IC 35-43-5-2).
- (16) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).
- (17) Bribery (IC 35-44-1-1).
- (18) Official misconduct (IC 35-44-1-2).
- (19) Conflict of interest (IC 35-44-1-3).
- (20) Perjury (IC 35-44-2-1).
- (21) Obstruction of justice (IC 35-44-3-4).
- (22) Intimidation (IC 35-45-2-1).
- (23) Promoting prostitution (IC 35-45-4-4).
- (24) Promoting professional gambling (IC 35-45-5-4).
- (25) Dealing in **or manufacturing** cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1).
- (26) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (27) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (28) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (29) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- (30) Money laundering (IC 35-45-15-5).

SECTION 17. IC 35-47-4-5, AS AMENDED BY P.L.14-2000, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) As used in this section, "serious violent felon" means a person who has been convicted of:

- (1) committing a serious violent felony in:
  - (A) Indiana; or
  - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or
- (2) attempting to commit or conspiring to commit a serious violent felony in:
  - (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or
  - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar



to the elements of attempting to commit or conspiring to commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);
- (4) battery as a Class B felony (IC 35-42-2-1(a)(4)) or Class C felony (IC 35-42-2-1(a)(3));
- (5) aggravated battery (IC 35-42-2-1.5);
- (6) kidnapping (IC 35-42-3-2);
- (7) criminal confinement (IC 35-42-3-3);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual battery as a Class C felony (IC 35-42-4-8);
- (12) robbery (IC 35-42-5-1);
- (13) carjacking (IC 35-42-5-2);
- (14) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));
- (15) burglary as a Class A felony or Class B felony (IC 35-43-2-1);
- (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- (17) resisting law enforcement as a Class B felony or Class C felony (IC 35-44-3-3);
- (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- (19) trafficking with an inmate as a Class C felony (IC 35-44-3-9);
- (20) criminal gang intimidation (IC 35-45-9-4);
- (21) stalking as a Class B felony or Class C felony (IC 35-45-10-5);
- (22) incest (IC 35-46-1-3);
- (23) dealing in **or manufacturing** cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1);
- (24) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (25) dealing in a schedule IV controlled substance (IC 35-48-4-3);
- or
- (26) dealing in a schedule V controlled substance (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Class B felony.



C  
o  
p  
y

SECTION 18. IC 35-48-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 18. "Manufacture" means:

(1) the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. It does not include ~~the preparation or compounding of a controlled substance by an individual for his own use or~~ the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(2) the organizing or supervising of an activity described in subdivision (1).

SECTION 19. IC 35-48-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, pure or adulterated, classified in schedule I or II; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, pure or adulterated, classified in schedule I or II;

commits dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, a Class B felony, except as provided in subsection (b).

(b) The offense is a Class A felony if:

(1) the amount of the drug involved weighs three (3) grams or more;

C  
o  
p  
y



- (2) the person:
  - (A) delivered; or
  - (B) financed the delivery of;
 the drug to a person under eighteen (18) years of age at least three
  - (3) years junior to the person; or- (3) the person **manufactured**, delivered or financed the delivery of the drug:
  - (A) on a school bus; or
  - (B) in, on, or within one thousand (1,000) feet of:
    - (i) school property;
    - (ii) a public park; ~~or~~
    - (iii) a family housing complex; **or**
    - (iv) a youth program center.**

SECTION 20. IC 35-48-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) A person who:

- (1) knowingly or intentionally:
    - (A) manufactures;
    - (B) finances the manufacture of;
    - (C) delivers; or
    - (D) finances the delivery of;
 a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, or hashish; or
  - (2) possesses, with intent to:
    - (A) manufacture;
    - (B) finance the manufacture of;
    - (C) deliver; or
    - (D) finance the delivery of;
 a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, or hashish;
- commits dealing in a schedule I, II, or III controlled substance, a Class B felony, except as provided in subsection (b).
- (b) The offense is a Class A felony if:
    - (1) the person:
      - (A) delivered; or
      - (B) financed the delivery of;
 the substance to a person under eighteen (18) years of age at least three (3) years junior to the person; or
    - (2) the person delivered or financed the delivery of the substance:
      - (A) on a school bus; or
      - (B) in, on, or within one thousand (1,000) feet of:
        - (i) school property;
        - (ii) a public park; ~~or~~



C  
o  
p  
y

(iii) a family housing complex; **or**

**(iv) a youth program center.**

SECTION 21. IC 35-48-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

a controlled substance, pure or adulterated, classified in schedule IV; or

(2) possesses, with intent to manufacture or deliver, a controlled substance, pure or adulterated, classified in schedule IV;

commits dealing in a schedule IV controlled substance, a Class C felony, except as provided in subsection (b).

(b) The offense is a Class B felony if:

(1) the person:

(A) delivered; or

(B) financed the delivery of;

the substance to a person under eighteen (18) years of age at least three (3) years junior to the person; or

(2) the person delivered or financed the delivery of the substance:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; ~~or~~

(iii) a family housing complex; **or**

**(iv) a youth program center.**

SECTION 22. IC 35-48-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

a controlled substance, pure or adulterated, classified in schedule V; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;



a controlled substance, pure or adulterated, classified in schedule V;  
 commits dealing in a schedule V controlled substance, a Class D felony, except as provided in subsection (b).

(b) The offense is a Class B felony if:

(1) the person:

(A) delivered; or

(B) financed the delivery of;

the substance to a person under eighteen (18) years of age at least three (3) years junior to the person; or

(2) the person delivered or financed the delivery of the substance:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; ~~or~~

(iii) a family housing complex; ~~or~~

**(iv) a youth program center.**

SECTION 23. IC 35-48-4-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 4.1. (a) A person who dumps, discharges, discards, transports, or otherwise disposes of:**

**(1) chemicals, knowing the chemicals were used in the illegal manufacture of a controlled substance or an immediate precursor; or**

**(2) waste, knowing that the waste was produced from the illegal manufacture of a controlled substance or an immediate precursor;**

**commits dumping controlled substance waste, a Class D felony.**

**(b) It is not a defense in a prosecution under subsection (a) that the person did not manufacture the controlled substance or immediate precursor.**

SECTION 24. IC 35-48-4-6, AS AMENDED BY P.L.188-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated), ~~or~~ a narcotic drug (pure or adulterated) classified in schedule I or II, ~~or~~ methamphetamine (pure or adulterated) commits possession of cocaine, ~~or~~ a narcotic drug, ~~or~~ methamphetamine, a Class D felony, except as provided in subsection (b).**

(b) The offense is:





- (1) a Class C felony if:
  - (A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or
  - (B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);
- (2) a Class B felony if the person in possession of the cocaine, ~~or~~ narcotic drug, **or methamphetamine** possesses less than three (3) grams of pure or adulterated cocaine, ~~or a~~ narcotic drug, **or methamphetamine**:
  - (A) on a school bus; or
  - (B) in, on, or within one thousand (1,000) feet of:
    - (i) school property;
    - (ii) a public park; ~~or~~
    - (iii) a family housing complex; ~~and or~~
    - (iv) a youth program center; and**
- (3) a Class A felony if the person possesses the cocaine, ~~or~~ narcotic drug, **or methamphetamine** in an amount (pure or adulterated) weighing at least three (3) grams:
  - (A) on a school bus; or
  - (B) in, on, or within one thousand (1,000) feet of:
    - (i) school property;
    - (ii) a public park; ~~or~~
    - (iii) a family housing complex; ~~or~~
    - (iv) a youth program center.**

SECTION 25. IC 35-48-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally possesses a controlled substance (pure or adulterated) classified in schedule I, II, III, or IV, except marijuana or hashish, commits possession of a controlled substance, a Class D felony. However, the offense is a Class C felony if the person in possession of the controlled substance possesses the controlled substance:

- (1) on a school bus; or
- (2) in, on, or within one thousand (1,000) feet of:
  - (A) school property;
  - (B) a public park; ~~or~~
  - (C) a family housing complex; ~~or~~
  - (D) a youth program center.**
- (b) A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally obtains:



C  
o  
p  
y

- (1) more than four (4) ounces of schedule V controlled substances containing codeine in any given forty-eight (48) hour period unless pursuant to a prescription;
- (2) a schedule V controlled substance pursuant to written or verbal misrepresentation; or
- (3) possession of a schedule V controlled substance other than by means of a prescription or by means of signing an exempt narcotic register maintained by a pharmacy licensed by the Indiana state board of pharmacy;

commits a Class D felony.

SECTION 26. IC 35-48-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) A person who:

- (1) knowingly or intentionally:
  - (A) manufactures;
  - (B) finances the manufacture of;
  - (C) delivers; or
  - (D) finances the delivery of;

marijuana, hash oil, or hashish, pure or adulterated; or

- (2) possesses, with intent to:
  - (A) manufacture;
  - (B) finance the manufacture of;
  - (C) deliver; or
  - (D) finance the delivery of;

marijuana, hash oil, or hashish, pure or adulterated;

commits dealing in marijuana, hash oil, or hashish, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense is:

- (1) a Class D felony if:
  - (A) the recipient or intended recipient is under eighteen (18) years of age;
  - (B) the amount involved is more than thirty (30) grams but less than ten (10) pounds of marijuana or two (2) grams but less than three hundred (300) grams of hash oil or hashish; or
  - (C) the person has a prior conviction of an offense involving marijuana, hash oil, or hashish; and

(2) a Class C felony if the amount involved is ten (10) pounds or more of marijuana or three hundred (300) or more grams of hash oil or hashish or the person delivered or financed the delivery of marijuana, hash oil, or hashish:

- (A) on a school bus; or
- (B) in, on, or within one thousand (1,000) feet of:
  - (i) school property;

C  
o  
p  
y



- (ii) a public park; ~~or~~
- (iii) a family housing complex; **or**
- (iv) a youth program center.**

SECTION 27. IC 35-48-4-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 13. (a) A person who knowingly or intentionally visits a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance commits visiting a common nuisance, a Class B misdemeanor.

(b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:

- (1) by persons to unlawfully use controlled substances; or
- (2) for unlawfully:
  - (A) **manufacturing;**
  - (B) keeping;
  - ~~(B)~~ (C) offering for sale;
  - ~~(C)~~ (D) selling;
  - ~~(D)~~ (E) delivering; or
  - ~~(E)~~ (F) financing the delivery of;
 controlled substances, or items of drug paraphernalia as described in IC 35-48-4-8.5;

commits maintaining a common nuisance, a Class D felony.

SECTION 28. IC 35-48-4-14.5, AS ADDED BY P.L.150-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.5. (a) As used in this section, "chemical reagents or precursors" refers to one (1) or more of the following:

- (1) Ephedrine.
- (2) Pseudoephedrine.
- (3) Phenylpropanolamine.
- (4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).
- (5) Anhydrous ammonia **or ammonia solution (as defined in IC 22-11-20-1).**
- (6) Organic solvents.
- (7) Hydrochloric acid.
- (8) Lithium metal.
- (9) Sodium metal.
- (10) Ether.
- (11) Sulfuric acid.
- (12) Red phosphorous.
- (13) Iodine.
- (14) Sodium hydroxide (lye).



- (15) Potassium dichromate.
- (16) Sodium dichromate.
- (17) Potassium permanganate.
- (18) Chromium trioxide.

**(b) A person who possesses anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6, commits a Class D felony. However, the offense is a Class C felony if the person possessed:**

- (1) a firearm while possessing anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6; or**
- (2) anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:**
  - (A) school property;**
  - (B) a public park;**
  - (C) a family housing complex; or**
  - (D) a youth program center.**

**(c) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture:**

- (1) Methcathinone, a schedule I controlled substance under IC 35-48-2-4;**
- (2) Methamphetamine, a schedule II controlled substance under IC 35-48-2-6;**
- (3) Amphetamine, a schedule II controlled substance under IC 35-48-2-6; or**
- (4) Phentermine, a schedule IV controlled substance under IC 35-48-2-10;**

**commits a Class D felony.**

**(d) An offense under subsection (c) is a Class C felony if the person possessed:**

- (1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6; or**
- (2) two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:**



C  
o  
p  
y

- (A) school property;
- (B) a public park;
- (C) a family housing complex; or
- (D) a youth program center.

SECTION 29. IC 35-48-4-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 16. (a) For an offense under this chapter that requires proof of:

- (1) delivery of cocaine, a narcotic drug, methamphetamine, or a controlled substance;
- (2) financing the delivery of cocaine, a narcotic drug, methamphetamine, or a controlled substance; or
- (3) possession of cocaine, narcotic drug, methamphetamine, or controlled substance;

within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center, the person charged may assert the defense in subsection (b) or (c).

(b) It is a defense for a person charged under this chapter with an offense that contains an element listed in subsection (a) that:

- (1) a person was briefly in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center; and
- (2) no person under eighteen (18) years of age at least three (3) years junior to the person was in, on, or within one thousand (1,000) feet of the school property, public park, family housing complex, or youth program center at the time of the offense.

(c) It is a defense for a person charged under this chapter with an offense that contains an element listed in subsection (a) that a person was in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center at the request or suggestion of a law enforcement officer or an agent of a law enforcement officer.

(d) The defense under this section applies only to the element of the offense that requires proof that the delivery, financing of the delivery, or possession of cocaine, a narcotic drug, methamphetamine, or a controlled substance occurred in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center.

SECTION 30. IC 35-50-2-2, AS AMENDED BY P.L.188-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a

C  
o  
p  
y



sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

(B) battery (IC 35-42-2-1) with a deadly weapon;

(C) sexual battery (IC 35-42-4-8) with a deadly weapon;

(D) kidnapping (IC 35-42-3-2);

(E) confinement (IC 35-42-3-3) with a deadly weapon;

(F) rape (IC 35-42-4-1) as a Class A felony;

(G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;

(H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;

(I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;

(J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;

(K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;

(L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;

(M) escape (IC 35-44-3-5) with a deadly weapon;

C  
o  
p  
y



(N) rioting (IC 35-45-1-2) with a deadly weapon;  
 (O) dealing in cocaine, ~~or~~ a narcotic drug, ~~or~~ **methamphetamine (IC 35-48-4-1) as a Class A felony; if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:**

- (i) school property;**
- (ii) a public park;**
- (iii) a family housing complex; or**
- (iv) a youth program center;**

(P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) ~~if the amount of controlled substance involved has an aggregate weight of three (3) grams or more; the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:~~

- (i) school property;**
- (ii) a public park;**
- (iii) a family housing complex; or**
- (iv) a youth program center;**

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or

(R) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for

C  
o  
p  
y



not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

**SECTION 31. [EFFECTIVE JULY 1, 2001] (a) IC 31-34-1-2, IC 35-38-1-7.1, IC 35-42-1-1, IC 35-45-6-1, IC 35-47-4-5, IC 35-48-1-18, IC 35-48-4-1, IC 35-48-4-2, IC 35-48-4-3, IC 35-48-4-4, IC 35-48-4-6, IC 35-48-4-7, IC 35-48-4-10, IC 35-48-4-13, and IC 35-50-2-2, all as amended by this act, and IC 22-11-20-6, IC 35-48-4-4.1, IC 35-41-1-29, as added by this act, apply only to offenses committed after June 30, 2001.**

**(b) IC 34-30-3-2, as added by this act, applies only to a cause of action that accrues after June 30, 2001. The enactment of IC 34-30-3-2, as added by this act, may not be considered in determining liability for a cause of action that accrues before July 1, 2001.**

**(c) IC 35-33-5-5, as amended by this act, applies to all actions of a law enforcement agency taken after June 30, 2001.**

**(d) The amendment of IC 35-38-2.6-1 by this act shall not be construed to reduce or invalidate a sentence imposed before July 1, 2001.**

C  
o  
p  
y





\_\_\_\_\_  
Speaker of the House of Representatives

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
President Pro Tempore

Approved: \_\_\_\_\_

\_\_\_\_\_  
Governor of the State of Indiana

C  
o  
p  
y

**HEA 1892 — Concur+**

